

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
PEGGY S. RUFFRA
Supervising Deputy Attorney General
ALLEN R. CROWN
Deputy Attorney General
State Bar No. 56818
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5847
Fax: (415) 703-1234
E-mail: Allen.Crown@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FELIPE ROCHA,

Petitioner,

v.

ROBERT A. HOREL, Warden,

Respondent.

C 07-3295 CRB (PR)

**ANSWER TO ORDER TO
SHOW CAUSE**

Respondent provides this answer to the Order to Show Cause why the petition for writ of habeas corpus should not be granted.

**I.
CUSTODY**

Petitioner is lawfully in the custody of the California Department of Corrections and Rehabilitation as the result of a judgment of conviction in Del Norte County in Case No. CRPB 03-5207.

On December 3, 2003, the District Attorney filed an information in Del Norte County

Superior Court accusing petitioner, Felipe Rocha, as follows: count one, assault by a non-life inmate with a deadly weapon or by means likely to cause great bodily injury in violation of California Penal Code § 4501^{1/} with a special allegation of great bodily injury in violation of § 12022.7; count two, battery with serious bodily injury in violation of § 243(d), with a special allegation of personal use of a deadly weapon within the meaning of § 12022(b), causing the offense to be a serious felony within the meaning of § 1192.7(c)(23); count three, participating in a riot in violation of § 405 with a special allegation of personal use of a deadly weapon within the meaning of § 12022(b), causing the offense to be a serious felony within the meaning of § 1192.7(c)(23); count four, possession of a weapon while confined in state prison in violation of § 4502(a). It was further alleged that petitioner was previously convicted within the meaning of § 1170.12 and § 667(b) to (i), and that petitioner was previously convicted and served a prison term within the meaning of § 667.5(b). 1 CT 16-18.

On October 4, 2004, the information was amended by dismissing counts two and three, and by striking the enhancement allegations under § 12022.7 and § 12022(b). Count four was renumbered as count two. 1 CT 144.

On October 5, 2004, the District Attorney withdrew the allegation that petitioner was previously convicted and served a prison term within the meaning of § 667.5(b). The issue of the remaining prior conviction allegation was submitted to the court without a jury. 1 CT 154.

On October 6, 2004, the jury returned guilty verdicts on counts one and two as charged, and the court found the remaining prior conviction allegation to be true. 1 CT 199, 201-02.

On November 4, 2004, the court sentenced petitioner to state prison for a term of eight years, consisting of double the midterm of four years for count one with double the midterm of six years for count two stayed under § 654, the term of eight years to be served consecutive to the term he was already serving. 1 CT 209-11.

On May 18, 2006, the California Court of Appeal, First Appellate District, affirmed the judgment. Exh. G.

1. Unspecified statutory references are to the California Penal Code.

1 On August 2, 2006, the California Supreme Court denied petitioner's petition for review.

2 Exh. I.

3 On June 22, 2007, petitioner filed a petition for writ of habeas corpus in this Court.

4 On November 15, 2007, this Court issued an order to show cause.

5 **II.**

6 **VERIFICATION**

7 Petitioner signed and verified the petition.

8 **III.**

9 **GENERAL AND SPECIFIC DENIALS**

10 Respondent denies that the state court's rulings were based on unreasonable
11 determinations of facts or were contrary to or involved an unreasonable application of clearly
12 established United States Supreme Court law. Respondent specifically denies petitioner's claims
13 as follows: one, ineffective assistance of counsel; and two, improper denial of motion to substitute
14 counsel.

15 **IV.**

16 **PROCEDURAL ISSUES**

17 Petitioner exhausted state remedies for his claims that are contained in the petition.
18 Petitioner filed his petition within the one-year statute of limitations period set by 28 U.S.C. §
19 2244(d).

20 **V.**

21 **LODGED DOCUMENTS**

22 Respondent is lodging concurrently with this answer the following exhibits:

23 EXHIBIT A Clerk's Transcript (2 vols.), *People v. Rocha*, Del Norte County Case No.
CRPB 03-5207.

24 EXHIBIT B Reporter's Transcript (15 vols.), *People v. Rocha*, Del Norte County Case No.
25 CRPB 03-5207.

26 EXHIBIT C Exhibit No. 15, *People v. Rocha*, Del Norte County Case No. CRPB 03-5207.

27 EXHIBIT D Appellant's Opening Brief, *People v. Rocha*, California Court of Appeal Case
28 No. A108363.

EXHIBIT E Respondent's Brief, *People v. Rocha*, California Court of Appeal Case No. A108363.

EXHIBIT F Appellant's Reply Brief, *People v. Rocha*, California Court of Appeal Case No. A108363.

EXHIBIT G Opinion, *People v. Rocha*, California Court of Appeal Case No. A108363.

EXHIBIT H Petition For Review, *People v. Rocha*, California Supreme Court Case No. S144613.

EXHIBIT I Denial Of Review, *People v. Rocha*, California Supreme Court Case No. S144613.

VI.

INCORPORATION BY REFERENCE

Respondent hereby incorporates by reference the accompanying memorandum of points and authorities in support of this answer.

VII.

CONCLUSION

Respondent respectfully requests that the petition for writ of habeas corpus be denied with prejudice.

Dated: December 10, 2007

Respectfully submitted,

EDMUND G. BROWN JR.

Attorney General of the State of California

DANE R. GILLETTE

Chief Assistant Attorney General

GERALD A. ENGLER

Senior Assistant Attorney General

PEGGY S. RUFFRA

Supervising Deputy Attorney General

/s/ Allen R. Crown

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